

375-3-3-.04 Appeals of Withdrawals

(1) Any person whose driver's license, permit, or driving privilege is cancelled, revoked, disqualified, suspended or denied is entitled to appeal the decision of the Department in taking such action. The purpose of the appeal will be to determine whether the Department acted in accordance with the law in taking such action.

(2) Administrative appeals of withdrawals must be submitted by mail, in writing to RM – Hearing Request, P.O. Box 80447, Conyers, Georgia 30013 and shall contain the following information:

- (a) The name, address, driver's license number and date of birth of the licensee who is the subject of the appeal;
- (b) The suspension type and effective date thereof, if known;
- (c) The names and addresses of all interested parties;
- (d) A clear and concise statement of the facts upon which the contested case arises;
- (e) The legal authority under which the appeal is filed, including all code sections;
- (f) A prayer setting forth the relief sought; and
- (g) If the party filing the request is represented by counsel, the name and address of counsel. Appeals submitted by attorneys should be signed by same.

(3) The Department will accept appeals as a matter of right only upon timely submission. However, it may, in its discretion, allow extensions of time and amendments of requests for good cause shown. Unless otherwise specified by statute or elsewhere within the rules of the Department, appeals shall be timely if received or postmarked within ten (10) calendar days of effective date of the suspension. No appeal shall be allowed if not requested in a timely manner except where events uncontrollable by the aggrieved person are shown by him or her to have prevented a timely request. In this regard, the decision of the ~~Commissioner~~ Department shall be final.

(4) Upon receipt of a timely, properly filed appeal in a contested case, the Department will forward the appeal and all pertinent documents to the Office of State Administrative Hearings in accordance with that agency's rules. Actions that are not contested cases as defined in the Administrative Procedures Act may be reviewed by the Commissioner.

(5) Appeals will be conducted in accordance with all applicable statutes and with the rules of the State Office of Administrative Hearings and the Department, as applicable.

(6) Appeals of suspensions imposed pursuant to O.C.G.A. 40-5-67.1.

(a) In addition to the requirements set forth in Paragraph (2), supra, any person who appeals an administrative license suspension or implied consent suspension arising under O.C.G.A. 40-5-67.1 shall submit a ~~nonrefundable~~nonrefundable filing fee of \$150.00. The timeliness provisions of Paragraph (3), supra, shall apply to the payment of such fees, except that for appeals authorized by O.C.G.A. 40-5-67.1 the appeal shall be timely if received or postmarked within thirty (30) calendar days of the issuance or serve date of the notice of intent to suspend (1205 or 1205s). The hearings unit will not accept hearing requests by fax.

(b)

1. In hearings conducted pursuant to O.C.G.A. 40-5-67.1, the arresting law enforcement officer may act on behalf of the Department as the complainant.
2. Withdrawal of Suspension by Arresting Officer.
 - i. The arresting officer may at his or her discretion withdraw the administrative license suspension at any time prior to the docketing of the case at OSAH.
 - ii. If the licensee does not timely appeal the suspension, the suspension shall be upheld as the Final Decision of the Department by operation of law, and the arresting officer may not withdraw the administrative license suspension thereafter.
 - iii. If the licensee submits an appeal within the statutorily allotted period for same, the arresting officer may withdraw the administrative license suspension at his or her discretion at any point prior to the issuance of the Final Decision by the Administrative Law Judge. Upon the issuance of the Final Decision, the arresting officer may not withdraw the suspension.

~~(7) — In appeals of suspensions initiated pursuant to O.C.G.A. 40-5-22(a.1)(2), a representative of the school or school system that submitted notice to the Department that a minor's driver's license, permit or privilege was subject to suspension may act on behalf of the Department as the complainant, including, but not limited to, the presentation of testimony and documentary or other evidence. If the licensee does not timely appeal the suspension as set forth in paragraph 6(a), the right to a hearing will be deemed waived.~~

- ~~(a) The decision as to the timeliness of the hearing shall be a final decision of the Department, unless granted reconsideration~~
- ~~(b) If a hearing request has been deemed untimely, the licensee may request reconsideration by mail, in writing to RM- Hearing Request, P.O. Box 80447, Conyers, Georgia 30013. The request must be received or postmarked within five (5) calendar days after the date of the decision.~~
- ~~(c) The request for reconsideration must be submitted in writing and include:
 - i. A clearly indication of the reasons for failure to timely submit the hearing request
 - ii. Documentation to support the indicated reasons
 - iii. A copy of the 1205 notice
 - iv. Documentation from U.S. Postal Service, UPS, FedEx, or any other deliver entity indicating dates of delivery.~~
- ~~(d) The decision from the request to reconsider shall be a final decision of the Department and may be appealed to the Superior Court of Fulton County or the County of the driver's residence.~~

Authority: O.C.G.A. 40-16-2, 40-16-3, 40-5-4, 40-5-101, 40-5-22, 40-5-67, 40-5-67.1, 40-9-34.

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this amendment is to clarify and update the language of the rule to reflect current practices of the Department and provide for a formal process for reconsideration of hearing requests.

DIFFERENCE BETWEEN EXISTING AND PROPOSED RULES

The proposed rule makes it clear that appeals shall be timely if received or postmarked within ten calendar days of the effective date of suspension, eliminating the assumption of ten business days. The \$150 filing fee is now considered nonrefundable. The proposed rule allows the arresting officer to withdraw the administrative license suspension at any time prior to the case being docketed at OSAH. All requests for reconsideration must now be received by the Department or postmarked within 5 calendar days after the date of the decision.